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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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NEPAL: Lack of robust investigation mechanisms result in continued practice of torture

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to the unabated practice of torture in Nepal. In the absence of scientific investigation technology and techniques, the Nepalese police have been routinely making use of torture in order to complete their investigations. While this has been ongoing, the police as an institution and the politicians as policymakers, have been turning blind and deaf to this menace.

The state of Nepal has inherited the decades old Police Force and the Royal Nepalese Army, many of whom fought during the conflict. Moreover, the security forces brought their ambivalent attitudes towards torture and impunity with them into modern Nepal.

The absence of the culture of collecting physical evidence results in the practice of torture, and the Nepal police is passive in collecting physical evidence. The country has the tradition of collecting confessions rather than evidence.

With Nepal's investigation system based on confession, law and order is in a fragile state. Confession comes by force or torture. Due to the lack of criminalization, torture and impunity are rampant. Ultimately, the rule of law situation has been affected.

The most common methods of physical torture reported include beatings using the hands, kicking (which may be while the police are still clad in their boots) and using instruments such as bamboo sticks, plastic pipes and batons. The severity of the torture does not necessarily depend on the instruments were used by the police.

Government officials have failed to recognize, and at times blatantly denied, the existence of the systematic use of torture in the post-conflict period, and downplayed the scale of the problem by characterizing instances of torture as isolated incidents.

As the government of Nepal ratified the CAT convention in 1991, it has an obligation to combat torture in Nepal. According to the Evidence Act 1974, the court would not consider evidence if it is the product of force or torture. After the ratification of the CAT Convention, Nepal enacted a Torture Compensation Act (TCA) 1996. But the TCA is not compatible with the CAT Convention. This law fails to criminalize torture, and simply provides reparation to the victims.

Due to lack of effective remedy and lack of criminalization of torture, victims of torture cannot file an FIR in the police stations. In many instances, the TCA failed to provide reparation to the victims of torture as well. One of the provisions in the TCA is the health check of the accused before arrest and before release. But this provision has been rarely implemented.

While the government has attempted to devolve responsibility for torture to the individual policeman, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. An implicit compact that no one will be prosecuted for the use of torture encourages, or, at the very least, permits the individual policeman to commit torture.

The ALRC respectfully requests the HRC to urge the government of Nepal to take concrete steps to end the practice of torture. This is a golden opportunity for the state to build infrastructure and bring in scientific technology for investigation. More training and resources to the policing institution must be made. Torture only serves to undermine the justice system (both criminal and civil) in Nepal, and this should motivate honest policymakers to take aggressive steps aimed at rooting it out.